

Guidelines for

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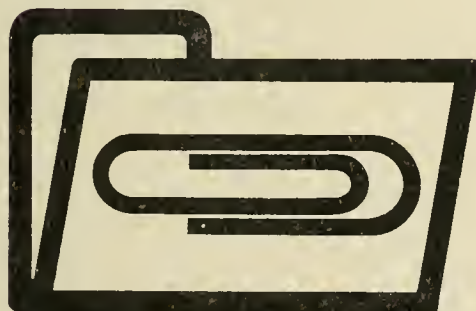
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GUIDELINES FOR STUDENT RECORDS

Requirements
Clarifications

Grades K-12



PLEASE RETURN

SEPTEMBER 1984

Office of Public Instruction
Ed Argenbright, Superintendent
State Capitol
Helena, Montana 59620

INTRODUCTION

The basic mandates for student records are:

1. Standards for Accreditation of Montana Schools, Montana Board of Public Education.
2. Family Educational Rights and Privacy Act (FERPA) of 1974 and its implementing regulations.
3. Public Law 94-142 laws and regulations for special education.
4. Montana laws and administrative rules pertaining to special education. (See Special Education Reference Manual.)

REQUIREMENTS

Each school district and educational agency maintaining student records must:

1. Formulate and adopt institutional policy and procedures concerning student records (FERPA, Reg. 99.5).
2. Annually notify parents of students in attendance or eligible students [attained 18 years of age and in attendance] of their rights pertaining to student records [FERPA, Reg. 99.6 and Special Education Reference Manual, 14.2(2)].
3. Keep a permanent file of student records [Standards of Accreditation, 207(1)].
4. Maintain separate special education records [Standards of Accreditation, 207(3)(a) and (b) and Special Education Reference Manual, 14.2(2)(a-c)].
5. Establish written procedures for the destruction of confidential records (Standards of Accreditation, 207(3)(b)(c) and Special Education Reference Manual 14.3).
6. Maintain a record of each request and each disclosure of personally identifiable information from the education records of a student (FERPA, Reg. 99.32).
7. Provide public notice that directory information is to be developed (FERPA, Reg. 99.37).
8. Permit the parent of a student or an eligible student to inspect and review the education records of the student. Must comply with request within a reasonable time, but in no case more than 45 days after the request has been made (FERPA, Reg. 99.11).
9. Amend the education records of a student upon an approved request by parent or eligible student. The request is authorized when parent or eligible student believes the information is inaccurate or misleading or violates the privacy or other rights of the student. When a decision is made not to amend records, the parent or eligible student must be informed of their right to a hearing (FERPA, Reg. 99.0).

10. Establish procedures for and conduct a hearing as required when parent or eligible student appeals the denial to amend a student's educational records (FERPA, Reg. 99.22).

CLARIFICATIONS

Transfer of Education Records

1. Written consent is not required to send records when the transferring school has a notice in its policies that it forwards education records on request to a school in which a student seeks or intends to enroll (FERPA, Reg. 99.31).
2. Special education records, including speech pathology, meet the definition of education records and must be included with the cumulative folder and other education records upon request to the gaining school (OPI clarification).

Rights of Noncustodial Parents

In the case of divorce or separation, a school district must provide access to education records to both custodial and noncustodial parents, unless there is a legal binding document that specifically removes that parent from FERPA rights (statement from FERPA office).

Sole Possession Records

To classify any record maintained by a staff member and directly related to a student as a sole possession record (exempt from parent or student access, challenge and control), an education agency or institution must make certain the record meets the following test:

1. It must be a private note created solely by the individual possessing it;
2. it must be a personal memory aid; and
3. the information contained in the note must not be accessible or revealed to any other person (including the student), except to the possessor's temporary substitute (statement from FERPA office).

Confidentiality Requirements of the Education of the Handicapped Act (EHA)

1. Under the EHA/Part B regulations, the term "children" includes children aged zero through 21, including those who have not yet become students—i.e., preschool or unserved. FERPA refers to "students" or "eligible students."
2. EHA/Part B regulations apply to all agencies involved in the state's identification, location, evaluation and education efforts. FERPA is applicable only to those students in attendance at education agencies and institutions receiving

funds from programs administered by departments of education.

3. Specific notification to parents that data will be collected on their children is required under EHA/Part B, and the parents' right to access is more extensive.
4. The EHA/Part B regulations concerning parental consent before release of personally identifiable information modify the FERPA requirements.
5. Specific safeguards to protect the confidentiality of personally identifiable information at all stages (storage, disclosure and destruction) are required by EHA/Part B, which also specifies procedures relating to the destruction of information after the need for such material has expired.
6. The severity of disability, in addition to the child's age, must be considered under EHA/Part B regulations in connection with the transfer of privacy rights from a parent to an 18-year-old student.
7. The state education agency is required under EHA/Part B regulations to have specific sanctions it can use to ensure implementation of the confidentiality requirements (*Education for the Handicapped Law Report*, editorial explanation).

Students Under Age 18—Right of Access

Each district should adopt a policy for access of student records by students under 18. Federal regulations do not preclude school districts from according students rights in addition to those accorded to parents of students (FERPA, Reg. 99.4).

Withholding Transfer of Records

Transfer of records cannot be held up for nonpayment of education fees—i.e., fee charges for lab, library books, shops, etc. (OPI legal counsel opinion).

Applicability to Private Schools

Private schools are subject to FERPA regulations if they receive funds under any federal program. FERPA is not applicable solely because students attending the school receive services under a federal program through another institution (FERPA, Reg. 99.1).

Computerized Data Base

Information stored in computers is subject to the provisions of FERPA and to state laws and rules pertaining to confidentiality (OPI clarification).

Access Rights

The parents of a student or eligible student who is or has been in attendance may inspect and review the stu-

dent's education records (FERPA, Reg. 99.11 and 99.3). Persons who may have access to personally identifiable information without prior consent are listed in FERPA, Reg. 99.31. Among those listed are:

1. State education authorities.
2. Persons connected with financial aid which the student has applied for or has received.
3. Organizations conducting studies for or on behalf of education agencies or institutions for the purpose of developing, validating or administering predictive tests, administering student aid programs and improving instruction.

Exempt from Record of Access (Log)

The following persons are not required to have their request for access to personally identifiable information recorded: parent of a student or eligible student; school officials (including teachers) who have been determined by the agency or institution to have legitimate education interests; persons having written consent of a parent; and persons acquiring directory information (FERPA, Reg. 99.32).

Conditions for Disclosure in Health and Safety Emergencies

Personally identifiable information from a student's education records may be disclosed to appropriate parties in connection with an emergency, if knowledge of the information is necessary to protect the health or safety of the student or other individuals (FERPA, Reg. 99.36).

Fees for Copies of Education Records

A fee may be charged for copies if that fee does not prevent the parents and eligible students from exercising their rights to inspect and review the records (FERPA, Reg. 99.8).

Disclosure to Federal and State Officials

Authorized federal and state officials may have access to student and other records related to the audit and evaluation of federally supported education programs or to the enforcement of or compliance with federal requirements for these programs (FERPA, Reg. 99.35).

SUMMARY

| TYPE | PERMANENT RECORDS (REQUIRED) | CUMULATIVE RECORDS (RECOMMENDED) | SPECIAL EDUCATION RECORDS | DIRECTORY INFORMATION |
|------------------|---|---|---|--|
| Access | <ol style="list-style-type: none"> 1. Name and address of student 2. Name and address of parent(s) or guardian 3. Date of birth 4. Academic work completed 5. Level of achievement (e.g., grades, standardized test scores, grade level completed) 6. Immunization record 7. Attendance data | <ol style="list-style-type: none"> 1. Access log 2. Health records (may be maintained separately) 3. Standardized test results less than 3 years old (e.g., intelligence, aptitude, interest or personality tests) 4. Educational and vocational plans 5. Record of extracurricular activities 6. Objective teacher evaluations/reports 7. Reports of serious or recurrent behavior patterns 8. Parental authorizations or prohibitions | <ol style="list-style-type: none"> A. Special education records: <ol style="list-style-type: none"> 1. Access log 2. Current referral forms 3. Permission for evaluation 4. Child study team report with accompanying evaluation data 5. Individualized education program 6. Permission for program placement B. Other special education records as required | <ol style="list-style-type: none"> 1. Name, address, telephone number of student 2. Date and place of birth 3. Major field of study 4. Participation in officially recognized activities and sports 5. Weight and height of members of athletic teams 6. Dates of attendance 7. Degrees and rewards received 8. The most recent previous education agency or institution attended by the student 9. Other similar information |
| Transfer Records | Parents, eligible students and persons and organizations designated under Access Rights Copy of permanent records will be sent to other school systems in compliance with FERPA | Parents, eligible students and persons and organizations designated under Access Rights Cumulative records will be sent to other school systems in compliance with FERPA | Parents, eligible students and persons and organizations designated under Access Rights Special education records will be sent to other school systems as part of education records | In accordance with school district policy by public notice Not applicable |
| Security | Kept in fireproof file or vault in the school building | Locked storage | Locked storage | Not applicable |
| Main-tenance | Information kept current and accurate | Periodically reviewed with outdated, information destroyed | Periodically reviewed with selected outdated information placed in a historical file | Information kept current and accurate |
| Destruction | Never. Maintained in perpetuity for every student who has been enrolled in the district or rural schools, in the county superintendent's office | Destroyed in accordance with board policy after the student graduates or permanently leaves the district | Destroyed after 5 years from the end of the student's education program. Reasonable effort must be made to notify parent or eligible student of intent to destroy records. | Not applicable |